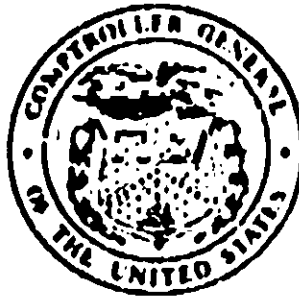


6641  
**DECISION**



R. Korman  
Page 1  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-191574

**DATE:** June 7, 1978

**MATTER OF:** Commander Equipment Services, Inc.

**DIGEST:**

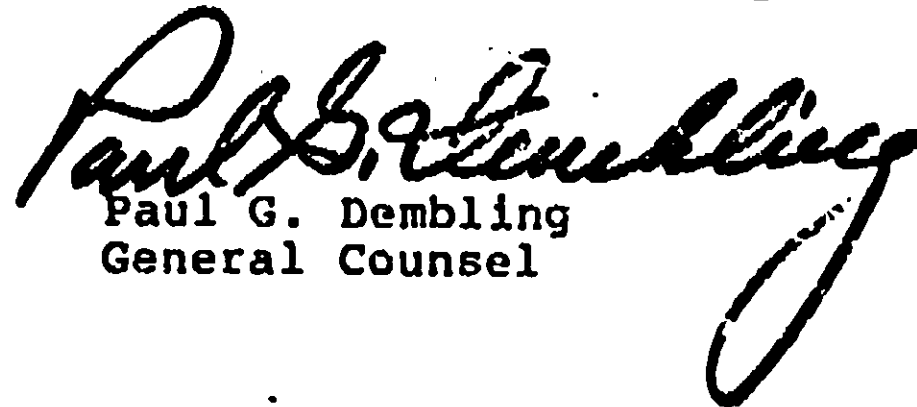
Question of whether bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor. If bidder is small business concern and contracting officer has determined that it is not a manufacturer or regular dealer, matter must be referred to SBA for review under section 501 of P.L. 95-89, 91 Stat. 553, 562. SBA may either certify small business to be eligible or forward matter to Secretary of Labor for final disposition. Thus, GAO will not consider such matters.

Commander Equipment Services, Inc. (Commander), protested to the General Services Administration that no awards should be made to Kessell Kitchen Equipment Co., Inc. (Kessell), under solicitation FPGG-Z-36273-N because Kessell did not qualify as a regular dealer as required by the Walsh-Healey Act. SSA denied the protest. Commander subsequently filed a timely protest with our Office. In M & S Products Corporation, B-191614, April 21, 1978, we considered the same issue involving Kessell. In that case, we stated as follows:

"The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. In the event that the bidder is a small business concern and the contracting officer has determined it to be ineligible

because it is not a manufacturer or regular dealer under the Walsh-Healey Act, section 501 of P.L. 95-89, 91 Stat. 553, 562, amending section 8(b) of the Small Business Act of 1958, requires that the matter be referred to the Small Business Administration for review. The Small Business Administration may either certify the small business concern to be eligible or forward the matter to the Secretary of Labor for final disposition. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. Imperial Products Company, B-191353, April 5, 1978."

Accordingly, we decline to consider the protest.

  
Paul G. Dembling  
General Counsel